

CATHARINE BOWIE }

vs.

JOHN T. BERRY. }

JULY TERM, 1849.

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[DOWER.]

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WHERE a husband alienes land in his lifetime, in which the wife refuses to relinquish her dower right, in assigning the wife a compensation in money in lieu of her dower, the value of the land at the time of the death of the husband is to be regarded, and not its value at the time of the alienation, unless its increased value has arisen from the labor and money of the alienee.

The improved value of the land, from which the widow is to be excluded in the assignment of her dower, as against a purchaser from her husband, is that which has arisen from the actual labor and money of the owner, and not from that which has arisen from extrinsic or general causes.

Where the husband holds only the equitable title, and parts with it in his lifetime, the widow shall not be allowed dower.

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[The bill in this case alleges, that the late Robert W. Bowie, the husband of the complainant, on the 1st of September, 1832, and during the coverture, purchased a tract of land called "Brookfield," and took a bond of conveyance therefor, with condition to convey the legal title upon the payment of the purchase money; and that, subsequently, on the 25th of November, 1843, the legal title, in fee, was conveyed to him, and the bond and deed are filed as exhibits with the bill.

It further alleges, that some time in the year 1839, the said Bowie, having previously sold and conveyed a small portion of said land to another person, sold the residue thereof to the defendant, John T. Berry, for about the sum of thirty thousand dollars, and, as complainant is informed, executed to him a bond of conveyance, with condition, upon the payment of the purchase money, to convey him a title free of incumbrances; but the bill alleges that the complainant is ignorant of the condition of the bond given by her husband, as she had always refused to relinquish her right of dower in the land so sold to Berry; and insisting that she is entitled to dower therein, the bill prays that it may be assigned to her in the usual way, by the decree of this court, or that said Berry may be compelled